

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Civil No. 1:19-cv-00085

August Kersten, Brian Berube and)
Lonesome Dove, Inc.,)

Plaintiffs,)

vs.)

City of Mandan,)

Defendant.)

**DEFENDANT CITY OF MANDAN'S
MOTION TO DISMISS COMPLAINT DUE
TO LACK OF STANDING AND DUE TO
CONSTITUTIONAL MOOTNESS**

(1.) Pursuant to Rule 7.1(A) of the Local Rules of the United States District Court for the District of North Dakota, Rule 12(b)(1) of the Federal Rules of Civil Procedure, and pursuant to *Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678, 687 (8th Cir. 2012) and other applicable law or rule, Defendant City of Mandan hereby requests dismissal of all of Plaintiffs' lawsuit claims. Plaintiffs lack standing and their claims are moot.

(2.) This motion is supported by the memorandum of law, Affidavit of John Van Dyke, and exhibits enclosed therewith, as well as all other files, records, and documents contained in the Court's Docket.

Dated this 9th day of December, 2019.

BAKKE GRINOLDS WIEDERHOLT

By: /s/ Bradley N. Wiederholt
Bradley N. Wiederholt (#06354)
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247
(701) 751-8188
bwiederholt@bgwattorneys.com

Attorneys for Defendant City of Mandan

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2019, a true and correct copy of the foregoing **DEFENDANT CITY OF MANDAN'S MOTION TO DISMISS COMPLAINT DUE TO LACK OF STANDING AND DUE TO CONSTITUTIONAL MOOTNESS** was filed electronically with the Clerk of Court through ECF.

ATTORNEYS FOR PLAINTIFF:

Erica Smith
Robert Frommer
Paul Sherman
Institute for Justice
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Phone: 703-682-9320
esmith@ij.org
rfrommer@ij.org
psherman@ij.org

David J. Chapman (#05531)
D J Chapman Law, P.C.
3523 45th Street S., #125
Fargo, ND 58104
dchapman@djchapmanlaw.com

By: /s/ Bradley N. Wiederholt
BRADLEY N. WIEDERHOLT